

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**SECOND APPEAL No. 149 of 1991****For Approval and Signature:****HONOURABLE MR.JUSTICE R.S.GARG**

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1 Whether Reporters of Local Papers may be allowed
to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy
of the judgment ?

4 Whether this case involves a substantial question
of law as to the interpretation of the
constitution of India, 1950 or any order made
thereunder ?

5 Whether it is to be circulated to the civil judge
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LAXMANGIRI NARANGIRI - Appellant(s)**Versus****STATE OF GUJARAT & 2 - Defendant(s)**

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Appearance :

MR SIKANDAR SAIYED for Appellant(s) : 1,
MR AY KOGJE, AGP for Respondent(s) : 1 - 3.

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG**Date : 27/12/2006****ORAL JUDGMENT**

1. Shri Sikandar Saiyed, under the authority of
Shri A.J. Shastri for the appellant and Shri
A.Y. Kogje, learned AGP for the respondents.

2. The appeal has been admitted for hearing the parties on the following substantial questions of law:-

“[i] Whether the non-supply of copies of documents demanded by the plaintiff by his letter dated 23.5.83 vitiates the impugned dismissal order as being violative of principles of natural justice?

[ii] Whether disciplinary authority has not assigned any reasons for passing dismissal order? If so, whether impugned dismissal order is bad on the ground of non-application of mind by the disciplinary authority?”

On 22.12.2006, further substantial question of law was also framed by this Court and notice of the same was given to the learned AGP. The said further substantial question of law reads as under:-

“Whether on the facts and in the circumstances of the case, dismissal of the appellant-plaintiff can be termed to be valid even when the appellate authority

before revising the opinion of the Inquiry Officer did not record its tentative findings nor issued any notice to the plaintiff to show cause as to why the findings recorded by the Inquiry Officer be not revised?"

3. Against the appellant, as many as four charges were levelled, he was put to departmental inquiry. According to the appellant-plaintiff, he was not provided copies of the documents demanded by him under his letter dated 23.5.83 and non-grant of copies of the documents vitiated the order of dismissal. It is also the submission of the plaintiff that the disciplinary authority did not assign any reasons for passing dismissal order. The State Government appeared in the matter and raised various issues including the issue of jurisdiction of the Civil Court. The learned trial court held that it had jurisdiction to decide the matter, but on the other questions raised in the suit it did not agree with the plaintiff and dismissed the suit. As the appeal proved futile, the appellant-plaintiff is before

this Court.

4. Learned counsel for the appellant submits that if question no.3 as framed on 22.12.06 is answered in favour of the appellant, then other questions may lose their importance and may have to be reopened by the disciplinary authority.

5. Placing reliance upon the judgment of the Supreme Court in the case of ***Punjab National Bank v. Kunj Bihari Mishra [AIR 1998 SC 2713]***, learned counsel for the appellant, after referring to Exh.42 – the notice to show cause against proposed punishment, submits that the notice does not meet the requirements of law as laid down by the Supreme Court in the matter of Punjab National Bank [supra].

6. Contending contrary to what is argued by the learned counsel for the appellant, Shri A.Y. Kogje, learned AGP for the respondents submits that Exh.42 – the notice to show cause meets all the requirements and as proper time of seven days was given to the appellant, the order of dismissal does not call for any interference.

7. I have gone through Exh.42. Exh.42 is a notice to show cause, it says that the inquiring authority has found charges no. 1 and 3 proved, the disciplinary authority was disagreeing with the findings recorded by the inquiring authority on charges no. 2 and 4. After recording its cursory difference, the disciplinary authority held that charges no. 2 and 4 were also proved. After recording its satisfaction on all four charges, the disciplinary authority issued notice to the plaintiff to show cause within a period of seven days that why his services be not terminated. The plaintiff submitted his representation against the proposed punishment, the representation could not persuade the disciplinary authority and the order of dismissal came to be passed.

8. In the present matter, Exh.42 does nowhere give any opportunity or any notice to the appellant to show cause against the findings proposed to be recorded against the interest of the present appellant. Exh. 42 is final order wherein it is observed by the disciplinary authority that all

four charges are proved and, on combined effect of the charges, punishment of dismissal was proposed.

9. In the matter of Punjab National Bank [supra], in paragraphs 19 and 20, the Supreme Court observed as under:-

"19. The result of the aforesaid discussion would be that the principles of natural justice have to be read into Regulation 7[2]. As a result thereof whenever the disciplinary authority disagrees with the inquiry authority on any article of charge then before it records its own findings on such charge, it must record its tentative reasons for such disagreement and give to the delinquent officer an opportunity to represent before it records its findings. The report of the inquiry officer containing its findings will have to be conveyed and the delinquent officer will have an opportunity to persuade the disciplinary authority to accept the favourable conclusion of the inquiry officer. The principles of natural justice, as we have already observed, require the authority, which has to take a final decision and can impose a penalty, to give an opportunity to the officer charged of misconduct to file

representation before the disciplinary authority records its findings on the charges framed against the officer.

20. The aforesaid conclusion, which we have arrived at, is also in consonance with the underlying principle enunciated by this Court in the case of Institute of Chartered Accountants [AIR 1987 SC 71] [supra]. While agreeing with the decision in Ram Kishan's case [1995 AIR SCW 4027] [supra], we are of the opinion that the contrary view expressed in S.S. Koshal [1994 AIR SCW 2901] and M.C. Saxena's cases [1998 AIR SCW 965] [supra] do not lay down the correct law."

10. In the said matter, the argument before the Supreme Court was that as the regulations do not contemplate a notice to show cause in case of disagreement between the disciplinary authority and the inquiring authority, a notice is not necessary. In para-19, the Supreme Court clearly observed that principles of natural justice have to be read in Regulation and as a result thereof, whenever the disciplinary authority disagrees with the inquiring authority on any article of charge, then before it records its own finding on such charge, it must record its

tentative reasons for such disagreement and give to the delinquent officer an opportunity to represent before it records its findings. If principles of natural justice are to be read in the service rule/ regulations, there is no escape from the legal effect.

11.Exh. 42 was repeatedly read in the Court, but the learned counsel for the State was unable to read even a single word in the said notice on strength of which it can be held in favour of the State that findings were defective findings and the disciplinary authority was issuing notice to the appellant-plaintiff to show cause that why findings be not recorded against the interest of the appellant.

12.Shri Kogje, learned counsel for the State, placing reliance upon the judgment of the Supreme Court in the matter of **J.A. Naiksatam v. Prothonotary and Senior Master, High Court of Bombay [air 2005 1218]** submits that if the rules do not provide for giving an opportunity by the disciplinary authority, then, non-issue of such notice would not vitiate the

proceedings. In the said matter, the Supreme Court did not differ from the judgment in the matter of Punjab National Bank [supra] and the judgment in the case of ***Yoginath D. Bagde v. State of Maharashtra [AIR 1999 SC 3734]*** but virtually followed the said two judgments. In the said matter, the Supreme Court had observed that the disciplinary authority gave its reasons for disagreement and the appellants were given opportunity and the appellants before it had given their full-fledge explanation. In fact, the Supreme Court had held that giving an opportunity of hearing to the delinquent would not be necessary if the rules did not contemplate for it. Said judgment of the two Hon'ble Judges, in fact, follows the judgment of three Hon'ble Judges delivered in the matter of Punjab National Bank.

13. In the present matter, in view of the findings recorded by me, I must hold that the disciplinary authority acted arbitrarily and against the norms settled by the Supreme Court. The order of dismissal as contained in Exh.47

cannot be allowed to stand, it deserves to and is accordingly set aside. The State, however, would have an authority to proceed against the appellant and if the officer is still of the opinion that the findings are required to be re-considered, then observing the judgment in the matter of Punjab National Bank [supra], he shall proceed in the matter.

14.The appeal is allowed. No costs.

15.Let a decree be framed accordingly. Direct service permitted.

[R.S. GARG, J.]

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